

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3  
4 JOSE RAMIREZ,

5 Petitioner

6 v.

7 BRIAN WILLIAMS, et al.,

8 Respondents

Case No. 2:19-cv-02073-JAD-EJY

**Order Dismissing Petition and Denying  
Application for Pauper Status**

[ECF Nos. 1 & 1-2]

9 Petitioner Jose Ramirez brings his petition for writ of habeas corpus under 28 U.S.C.  
10 § 2254 to challenge his 2007 Nevada state-court conviction.<sup>1</sup> On initial review under the Rules  
11 Governing Section 2254 Cases,<sup>2</sup> the petition appeared to be subject to dismissal with prejudice  
12 because it was filed long after the one-year filing deadline in 28 U.S.C. § 2244(d)(1) expired. So  
13 I ordered Ramirez to show cause in writing by January 15, 2020, why his petition should not be  
14 dismissed with prejudice as time-barred. I also deferred consideration of his application to  
15 proceed *in forma pauperis* and motion for appointment of counsel until after he responded to the  
16 order to show cause.<sup>3</sup> He failed to respond or request an extension of time to do so. I thus  
17 dismiss his petition with prejudice as time-barred and deny his pending motions as moot.

18 **Discussion**

19 Ramirez's petition challenges a 2007 conviction and sentence imposed by the Eighth  
20 Judicial District Court for Clark County in *State v. Ramirez*, Case No. 03C191567-2.<sup>4</sup> A jury

21  
22 <sup>1</sup> ECF No. 1-1.

23 <sup>2</sup> All references to a "Habeas Rule" or the "Habeas Rules" in this order identify the Rules  
24 Governing Section 2254 Cases in the United States District Courts.

<sup>3</sup> ECF Nos. 1 & 1-2.

25 <sup>4</sup> See also *Ramirez v. State*, Case No. 50823 (Nev. Sup. Ct.). I take judicial notice of the online  
26 docket records of the state district court and appellate courts. The state courts' docket records  
27 may be accessed by the public online at  
28 <https://www.clarkcountycourts.us/Anonymous/default.aspx> and  
<http://caseinfo.nvsupremecourt.us/public/caseSearch.do>. According to state court records, no  
intervening judgment of conviction has been entered in Ramirez's criminal case.

1 found Ramirez guilty of multiple counts of conspiracy to commit a crime, robbery, burglary,  
2 first-degree kidnapping, and use of a deadly weapon in commission of a crime. In August 2007,  
3 the state court entered a judgment of conviction and sentenced him to multiple terms of  
4 imprisonment.<sup>5</sup>

5 Ramirez appealed that conviction to the Nevada Supreme Court, which dismissed the  
6 appeal on February 21, 2008. There is no indication that Ramirez filed a petition for writ of  
7 certiorari with the United States Supreme Court. The state-court record shows that he did not  
8 file a state petition for writ of habeas corpus seeking post-conviction relief and, in his petition, he  
9 represents that he has not previously filed any petitions, applications, or motions with respect to  
10 this conviction in any state or federal court.

11 Ramirez filed his federal petition on December 3, 2019.<sup>6</sup> About two weeks later, I issued  
12 an order to show cause (“OSC”) why Ramirez’s petition should not be dismissed as untimely.<sup>7</sup>  
13 The federal one-year limitation period, unless otherwise tolled or subject to delayed accrual,  
14 begins running after “the date on which the judgment became final by the conclusion of direct  
15 review or the expiration of the time for seeking such direct review.”<sup>8</sup> The federal limitations  
16 period is tolled while “a properly filed application for State post-conviction or other collateral  
17 review with respect to the pertinent judgment or claim is pending.”<sup>9</sup>

18 The OSC notes that Ramirez’s conviction became final when the time expired for filing a  
19 notice of appeal with Nevada appellate courts on September 7, 2007.<sup>10</sup> The federal statute of  
20 limitations thus began to run the following day. The court assumed, without deciding, that the  
21 limitations period was tolled during the pendency of Ramirez’s direct appeal from December 21,

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22 <sup>5</sup> In November 2007, the state court entered an amended judgment of conviction reducing the  
23 amount of restitution.

24 <sup>6</sup> ECF No. 1-1.

25 <sup>7</sup> ECF No. 3.

26 <sup>8</sup> 28 U.S.C. § 2244(d)(1)(A).

27 <sup>9</sup> 28 U.S.C. § 2244(d)(2).

28 <sup>10</sup> The Nevada Supreme Court’s dismissal order indicates that Ramirez did not appeal the original  
judgment of conviction, which was entered on August 8, 2007.


1 2007, until February 21, 2008. The time expired for filing a petition for writ of certiorari with  
2 the United States Supreme Court on May 21, 2008, so the limitations period would have started  
3 to run again on May 22, 2008. Before the direct appeal was filed, 167 days of the federal  
4 limitations period elapsed. Once the limitations period began to run again, it expired 198 days  
5 later. Absent another basis for tolling or delayed accrual, the statute of limitations expired on  
6 December 5, 2008, making this petition—filed nearly 11 years later—untimely on its face. The  
7 OSC ordered Ramirez to show cause in writing by January 15, 2020, why the petition should not  
8 be dismissed with prejudice as time-barred under § 2244(d).

9 To date, Ramirez has not responded to the OSC. He was warned that his petition would  
10 be dismissed with prejudice without further advance notice if he did not timely respond.  
11 Ramirez filed the current petition nearly eleven years after the statute of limitations expired. He  
12 has not alleged or established that his circumstances prevented him from filing a federal petition.  
13 He has not asserted an entitlement to equitable tolling or delayed accrual. He has not argued that  
14 he is actually innocent, much less come forward with new reliable evidence tending to establish  
15 actual factual innocence. Accordingly, the petition, filed more than a decade after the expiration  
16 of the statute of limitations, is untimely and must be dismissed.

17 IT IS THEREFORE ORDERED that:

- 18 1. Petitioner Jose Ramirez’s Petition for Writ of Habeas Corpus [ECF No. 1-1] is  
19 **DISMISSED with prejudice as untimely.**
- 20 2. **A certificate of appealability is DENIED** because jurists of reason would not find  
21 my dismissal of this petition as untimely to be debatable or wrong.
- 22 3. Ramirez’s Application to Proceed *In Forma Pauperis* and Motion for Appointment of  
23 Counsel [ECF Nos. 1 and 1-2] are **DENIED as moot.**
- 24 4. Under to Rule 4 of the Rules Governing Section 2254 Cases, the Clerk of Court is  
25 directed to ADD Nevada Attorney General Aaron D. Ford as counsel for respondents  
26 and informally SERVE the Nevada Attorney General by directing a notice of  
27 electronic filing of this order to his office. No response is required from respondents  
28 other than to respond to any orders of a reviewing court.

5. The Clerk of Court is directed to ENTER FINAL JUDGMENT dismissing this action with prejudice, and CLOSE THIS CASE.

  
U.S. District Judge Jennifer A. Dorsey  
Dated: February 4, 2020February 4, 2020